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2 UNITED STATES DISTRICT COURT  
3 EASTERN DISTRICT OF NEW YORK  
4 -----x

18-CR-457 (AMD)

5 UNITED STATES OF AMERICA,

6 Plaintiff, United States Courthouse  
7 -----x Brooklyn, New York

8 -against- September 9, 2021

9 HUAWEI TECHNOLOGIES CO., 3:45 p.m.

10 LTD,  
11 -----x

12 Defendant.

13 TRANSCRIPT OF CRIMINAL CAUSE FOR MOTION TO SEAL COURTROOM  
14 ALL PRESENT VIA TELECONFERENCE AND/OR VIDEOCONFERENCE  
15 BEFORE THE HONORABLE CHERYL L. POLLAK  
16 UNITED STATES CHIEF MAGISTRATE JUDGE  
17 -----x

18 APPEARANCES

19 For the Government: UNITED STATES ATTORNEY'S OFFICE  
20 Eastern District of New York  
21 271 Cadman Plaza East  
22 Brooklyn, New York 11201  
23 BY: JULIA NESTOR, ESQ.  
MEREDITH ASHLEY ARFA, ESQ.  
ALEXANDER SOLOMON, ESQ.  
DAVID KESSLER, ESQ.  
SARAH EVANS, ESQ.  
CHRISTIAN NAUVEL, ESQ.  
DAVID LIM, ESQ.  
LAURA BILLINGS, ESQ.  
Assistant United States Attorneys

24 For the Defendant: JENNER & BLOCK LLP  
25 1099 New York Avenue NW  
Washington, DC 20001  
BY: DAVID BITKOWER, ESQ.  
MATTHEW HELLMAN, ESQ.

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produced by computer-aided transcription.

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1 APPEARANCES CONTINUED:

2 For the Defendant: SIDLEY AUSTIN, LLP  
3 787 Seventh Avenue  
4 New York, New York 10019  
5 BY: THOMAS C. GREEN, ESQ.  
6 DOUGLAS A. AXEL, ESQ.  
7 MICHAEL A. LEVY, ESQ.

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13 produced by computer-aided transcription.

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1                   COURTROOM DEPUTY: This is the matter of United  
2 States versus Huawei Technologies Co. Ltd. 18 CR 457,  
3 criminal cause for motion to seal the courtroom. It is  
4 September 19, 2021, at 3:47 p.m.

5                   Counsel, please state your appearances for the  
6 record.

7                   MS. NESTOR: Good afternoon. We have Julia Nestor,  
8 Alex Solomon, David Kessler, Sarah Evans, and Meredith Arfa,  
9 for the Eastern District of New York for the Government. You  
10 also have Laura Billings, from the money laundering and asset  
11 protection for DOJ. And I believe David Lim from the National  
12 Security Division of DOJ is on, as well.

13                  I don't think I missed anybody.

14                  THE COURT: Good afternoon, all of you.

15                  MR. GREEN: Good afternoon. Afternoon, Your Honor.  
16 Can you hear me? This is Tom Green from Sidley Austin. And  
17 my colleagues from Sidley are Mike Levy, who is here with us,  
18 and Doug Axel.

19                  I don't think there are other Sidley lawyers on the  
20 call, but I maybe wrong. If they are, would they identify  
21 themselves, please.

22                  I'm going to turn it over to Mr. Bitkower.

23                  MR. BITKOWER: Good afternoon, Your Honor. David  
24 Bitkower and Matthew Hellman from Jenner & Block, also for the  
25 defense.

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1 THE COURT: All right. Good afternoon, everyone.

2 We have some other people appearing by telephone.

3 Do any of you wish to be heard today? If so, would  
4 you please state your appearances, for the record.

5 MR. NAUVEL: Your Honor, this is Christian Nauvel  
6 from the money laundering section.

7 Apologies for the technical difficulties.

8 THE COURT: No, that's fine. All right.

9 Anyone else on the phone who wishes to be heard  
10 during these proceedings? Okay.

11 Well, Ms. Nestor, I guess I'll turn the proceedings  
12 over to you to put on the record what we're here for this  
13 afternoon.

14 MS. NESTOR: Sure, Your Honor. In terms of the  
15 sealing procedure, I think Ms. Arfa is going to handle that  
16 from the Government, and I'll handle the argument.

17 THE COURT: Okay. So Ms. Arfa.

18 MS. ARFA: Good afternoon, Your Honor. The  
19 Government moves to close the courtroom for today's  
20 proceedings in order for the Court, the Government, and the  
21 defendant to address the defendant's motion to compel.

22 As further set forth in the Government's sealed  
23 motion, the purpose of today's proceedings is to discuss a set  
24 of sensitive documents that has been designated as sensitive  
25 discovery materials, or SKM, under the Court's order,

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1 protective order which prohibits public disclosure of those  
2 documents and their contents. Discussion of those documents,  
3 therefore, cannot occur in open court.

4 The defendants have raised certain concerns about  
5 the Government's closure motion, but for purposes of today's  
6 proceedings, the defendants are not contesting that the  
7 documents to be discussed constitute SKM, nor are they  
8 objecting to closing the courtroom for purposes of today's  
9 proceeding. I'll note also that the government provided  
10 public notice of its motion for courtroom closure yesterday.

11 Your Honor, the framework for courtroom closure is  
12 well established under Second Circuit precedence. First, the  
13 Court must identify, through specific finding, whether there  
14 is a substantial probability of prejudice to compelling  
15 interest of the defendant, the Government, or a third party.

16 Second, where the Court finds there is a substantial  
17 probability of prejudice, the Court must consider whether  
18 reasonable alternatives to closure can protect the compelling  
19 interest.

20 Third, the Court must decide whether the prejudice  
21 to the compelling interest overrides the qualified First  
22 Amendment Right of access.

23 Finally, if the Court determines that closure is  
24 warranted, the Court must advise a closure order that is  
25 narrowly tailored to protect the compelling interests.

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1           Here, Your Honor, the Government respectfully  
2 requests that the Court make the following finding: First, it  
3 is a substantial probability that public discussion of the  
4 motion to compel would prejudice compelling interest of the  
5 Government.

6           Second, no reasonable alternative to closure of the  
7 courtroom exists that would adequately protect the compelling  
8 interest of the Government, while allowing for public  
9 discussion on its motion. The parties today must be able to  
10 speak freely and fulsomely.

11           Third, assuming a public right of access to today's  
12 proceeding, the prejudice the Government's compelling interest  
13 outweighs the qualified First Amendment Right of the public  
14 and the media to access the proceedings.

15           Finally, disclosure should be narrowly tailored by  
16 allowing the transcript of today's proceeding to be unsealed  
17 once the likely prejudice to the Government's interest no  
18 longer outweighs the qualified right to access.

19           The defendants have asked that the parties review  
20 the transcript and propose redactions. The Government is  
21 prepared to proceed in that manner, specifically reviewing the  
22 transcripts and working with defense counsel to propose  
23 redactions. We're hopeful the parties will be able to reach  
24 agreements on the proposed redactions, but we anticipate there  
25 may be some disputes.

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1           Accordingly, we request 10 days, rather than the  
2 five requested by defendant, from the date in which the  
3 transcript is released for the parties to submit proposed  
4 reductions to the Court without any disagreement among the  
5 parties noted.

6           Your Honor, the Government respectfully submits that  
7 the Court should make these or similar findings on the record  
8 and also enter the proposed order submitted by the Government  
9 or a similar order, and close the courtroom for today's  
10 proceeding. Thank you.

11           THE COURT: All right. Thank you.

12           Mr. Green, Mr. Bitkower, who wishes to address this  
13 on behalf of the defendant?

14           MR. GREEN: Mr. Bitkower will, Your Honor.

15           THE COURT: Thank you.

16           MR. BITKOWER: Thank you, Your Honor.

17           As we indicated in our response to the Government's  
18 motion to close the courtroom from yesterday, we think the  
19 Government's original motion substantially overstated the  
20 basis for closure here. But Ms. Arfa is correct that we do  
21 not object, under the circumstances present here, to closure  
22 in this instance. We believe the Court can find here that  
23 there is a substantial likelihood of a full discussion of the  
24 issues may require discussion of some legitimately sensitive  
25 information, and so we're not objecting to closure on that

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1 basis. We don't think the Court should enter the Government's  
2 proposed order from yesterday, but the findings as Ms. Arfa  
3 stated today, we think would be appropriate and we don't  
4 object to them. And the difference between five days to view  
5 the transcript and 10 days to view the transcript, we don't  
6 object to that either. We simply didn't want there to be an  
7 indefinite unilateral blank check for the Government to decide  
8 when the transcript should be addressed and unsealed.

9 So on those terms, we're prepared to not object.

10 THE COURT: All right. Is there anyone else present  
11 who wishes to be heard on issue of closure at this time?

12 Okay. I hear no responses, so I'm going to issue  
13 the following order: Upon consideration of the motion of the  
14 United States, filed under seal for an order to close the  
15 courtroom during this status conference and having scheduled  
16 this public hearing on the motion and provided notice to the  
17 public of the hearing and having held this hearing, of course,  
18 with no interveners appearing, even though they would have  
19 been provided an opportunity to be heard, I have considered  
20 the arguments of both sides and the submissions of the  
21 parties, and I make the following findings: One, there is a  
22 substantial probability that a public proceeding would result  
23 in the public disclosure of certain discovery material which  
24 has been provided to the defendant only pursuant to a  
25 protective order, and this would cause prejudice and create --

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1 excuse me, cause prejudice to the Government's compelling  
2 interests in avoiding possible efforts to obstruct its  
3 prosecution as set forth in their motion.

4 Two, the Court finds there are no reasonable  
5 alternatives to closure of the courtroom that can adequately  
6 protect the compelling interests that would be prejudiced by a  
7 public proceeding.

8 Three, the probable prejudice to these compelling  
9 interests overrides the public's and the media's qualified  
10 First Amendment Right to access the proceeding, particularly  
11 in light of the further limitations that I am imposing on the  
12 closure as set forth below.

13 So accordingly, pursuant to the decision of the  
14 Second Circuit *United States versus O'Hara*, and in *United*  
15 *States versus Doe*, it is ordered that the motion to close the  
16 courtroom during the hearing in this matter is granted.

17 It is further ordered that the Government's motion  
18 to seal the transcript of these proceedings is granted.

19 It is further ordered that the closure of the  
20 courtroom be tailored by requiring the parties to review the  
21 transcript of the proceedings, and within 10 days of receipt  
22 of the transcript, propose redactions limited to those  
23 necessary to protect sensitive nonpublic information from  
24 disclosure or show cause why redactions would not suffice to  
25 protect the compelling interests identified above.

AVERY N. ARMSTRONG, RPR  
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1           It is further ordered that the Court provisionally  
2 grant the Government's request to file its letter motion to  
3 close the courtroom under seal, including any additional  
4 documents in connection with the motion and the government's  
5 proposed order.

6           The Government is further ordered, however, to  
7 provide an explanation as to why the initial letter seeking  
8 closure should be filed under seal. Such explanation shall be  
9 filed with the Court within five days of this order.

10           And it is further ordered that the docket in this  
11 case be amended to reflect the occurrence of the hearing on  
12 the motion to close the courtroom, the disposition of the  
13 motion, and the fact of closure, courtroom closure. So  
14 ordered. Okay.

15           So at this point, I would ask that anyone who is  
16 appearing by phone -- and unless they are somehow connected to  
17 this proceeding, we're going to end the AT&T call and  
18 effectively close the courtroom that way. Only those who have  
19 been provided with access to this Webex proceeding will be  
20 allowed to continue. If there's anyone here who was unable to  
21 access the Webex video, I believe there was a phone number  
22 provided that you could call in separately and not on the AT&T  
23 line. So I'm going to give everyone a minute or two to hang  
24 up and redial in, if, in fact, that's what they wish to do.

25           And Scott, I assume you're still on the line. Would

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1 you please ensure that the AT&T line is discontinued.

2 COURTROOM DEPUTY: I'm here, Judge. I'll do that  
3 now.

4 (Pause in Proceedings.)

5 THE COURT: That seems to cover everyone. So I  
6 guess we will now move to the actual motion before us.

7 It is defendant's motion to compel, so I will hand  
8 the argument over to whoever intends to take the lead on this.

9 Mr. Green, Mr. Bitkower, who's going?

10 MR. GREEN: It's Mr. Axel, Your Honor.

11 THE COURT: Okay. Go ahead.

12 MR. AXEL: Thank you, Your Honor. This is Douglas  
13 Axel, also from Sidley Austin, representing the defendants.  
14 Thank you for the opportunity to address the Court today and  
15 for the Court's participation in this.

16 We have been -- as indicated in the papers, we've  
17 been after these materials for greater than two years now. We  
18 do believe that they are well within what is appropriately  
19 considered to be *Brady* material. They undermine the  
20 Government's showing on both the elements of intent to defraud  
21 and materiality with respect to the fraud charges that allege  
22 [REDACTED] as a victim.

23 In December of 2020, as I'm sure the Court is aware  
24 from the papers, was the first time really there was any  
25 production of this material and that was in the form of the

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1 summaries. And you know, at the time, first of all, the  
2 Government did delay for some 21 months or so, and then at the  
3 time they continued to assert that it's not *Brady* and that  
4 they're producing it in abundance of caution. And while we do  
5 appreciate the summaries that were produced and the effort  
6 that went into it, the -- we do -- the process has engendered  
7 concerns that are, you know, even broader than the materials  
8 that are currently here today as to how the Government is  
9 approaching its *Brady* obligations. We happened to have known  
10 about these materials through some disclosures made in the  
11 public record. We were able to chase and follow up, et  
12 cetera, several times. So you know, more broadly, we have  
13 broader concerns about things that we don't know about.

14 But be that as it may, I know we're here to focus on  
15 the particular materials that we've brought before the Court  
16 and prepared to address each of those, in-turn. With respect  
17 to the other *Brady*, we'll continue to meet and confer with the  
18 Government, and we hope to resolve other issues. But we may  
19 be back here again.

20 As to the three categories, first, the monitor  
21 reports. Those, we believe, are subject to discovery, both  
22 under Rule 16 and under *Brady*. I think it's not a closed  
23 question under Rule 16. These are clearly materials of the  
24 defense that the Government doesn't really contest that. They  
25 say, well --

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1 (Court reporter clarification.)

2 MR. AXEL: It's our position that these are  
3 evidentiary, and it's a report that is admissible against the  
4 Government. The Government says, well, we may have objections  
5 to that. It expresses opinions of the monitor not  
6 sufficiently factual, and there may be 403 objections, and we  
7 should get to litigate those evidentiary objections without  
8 the defendant's having the reports to be able to offer the  
9 defendant's views about admissibility, and then only what the  
10 Court rules in that ex parte process to be admissible, should  
11 the defense then get the materials. I'm not aware of any  
12 Court that has endorsed that process.

13 Obviously, we need them in order to be able to  
14 prepare our defense, to consider whether to seek the admission  
15 of them to be able to participate meaningfully in any hearing  
16 regarding the admissibility. Rule 16(a)(1)(E) is clear, if  
17 it's material to the defense, the Government must permit the  
18 defendant to inspect and copy the documents. It does not  
19 authorizes summaries. Also, in Rule 16, there are  
20 authorizations for, you know, process by which the Government  
21 can provide summaries, but not (a)(1)(E). And we cited one  
22 District Court decision, you know, holding that. So I think  
23 that's pretty clear.

24 And then even under *Brady*, I think summaries are  
25 insufficient. A lot of the *Brady* decisions, I think, have to

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1 do with what must be provided with respect to information  
2 that's known to the Government. But here, we have documents  
3 that are, again, evidentiary, and in that circumstance, we  
4 don't think *Brady* authorizes, you know, a summary of the  
5 documents. *Brady* requires the production of the evidence.  
6 And so we think that under *Brady*, just as a sort of  
7 categorical matter, when you're talking about documentary  
8 materials such as this, the materials themselves must be  
9 produced, and then even as theoretically or as a matter of  
10 law, it's possible that, you know, summaries could be  
11 sufficient.

12 We also submit that here, [REDACTED] are  
13 incomplete. This is, as the Court I'm sure is aware, is a  
14 complex case. It's a corporate defendant -- defendants. The  
15 alleged victim is also a large multinational corporation, and  
16 the knowledge and intent of these corporate entities, over  
17 different lengthy periods of time, is of critical importance  
18 in connection with these fraud charges. There's hundreds of  
19 witnesses, many of whom are overseas. And given that  
20 background with the complexity, you know, [REDACTED] that  
21 appears to us to not provide [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]

25 [REDACTED] The

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1 Government would know that information. And that's critical  
2 for us to be able to prepare our defense, as well.

3 You know, the Government, I think in response to  
4 what is known around [REDACTED] knowledge, has asserted that its  
5 low-level employees for [REDACTED] and therefore, sort of discounts  
6 what would be a defense showing undermining both intention to  
7 fraud and materiality. And, you know, obviously, that's an  
8 assertion that we need to explore to challenge. And so all of  
9 the details around [REDACTED] knowledge, actions, intentions,  
10 statements, with respect to, you know, Huawei and Skycom are  
11 critical, [REDACTED] appear to us to not include what we  
12 believe, you know, should have been [REDACTED] You know,  
13 and obviously not having access, you know, we don't know for  
14 sure what's there.

15 Then finally, just on this point -- and I'll pause,  
16 Your Honor, and would welcome questions on the monitor report,  
17 and then I know we have two other categories. [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED] we submit that the ex parte process that the  
22 Government has proffered is not the right way to go here.  
23 We -- it does not seem plausible to the defense that the

24 [REDACTED]

25 [REDACTED]

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5 We submit that there is no reason to believe that

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9 [REDACTED] If there's some specific questions there, we'd be  
10 happy to address them. But we're confident that defense  
11 counsel can work to, you know, avoid any concerns or problems,  
12 have access to the monitor reports [REDACTED] and then be  
13 able to assess whether in Court, you know, what is exculpatory  
14 material to the defense, and then be able to address these  
15 issues further if that was the way the Court wanted to go.

16 So that's an overview of, you know, our positions on  
17 the monitor report. Happy to take questions on that or to go  
18 to the other two categories of the Court's preference.

19 THE COURT: Well, I think what I would prefer to do,  
20 frankly, at this point, is to hear from the Government on your  
21 arguments related to the monitor reports before we address the  
22 other issues that you raised in your motion. I think, you  
23 know, I have reviewed [REDACTED] I do think your concerns  
24 are somewhat mistaken. But let me hear from the Government on  
25 the issue.

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1                   First of all, I'd like you to address the argument  
2 that was just made with respect to Rule 16, the argument that  
3 this is actually evidence, these are documents, so summaries  
4 are not sufficient. I don't think that was addressed in your  
5 papers, but maybe I missed it. So if you wouldn't mind  
6 starting with that, and then we can also address the *Brady*  
7 question which I feel I have a better handle on.

8                   But who would like to address this from the  
9 Government's perspective?

10                  MS. NESTOR: Sure, Your Honor. Julia Nestor, for  
11 the record. I'll address that. Thank you.

12                  In terms of the Rule 16 argument, the defendants  
13 have the information that is the Rule 16 information, Your  
14 Honor. And I think that would be evident from the [REDACTED]  
15 the Government has made in camera to the Court. The  
16 defendant's points to no persuasive authority that the  
17 Government has an obligation to provide more than the Rule 16  
18 information. For instance, Your Honor, if there was some  
19 other document out there where there was both Rule 16 and  
20 irrelevant information, I don't think there's any case law  
21 that's been decided, except for one, I think, case in May  
22 where the Government could not provide the information to  
23 allow the defendants to prepare the defense.

24                  Now, I understand the Rule 803 issue. The  
25 Government's position is that for purposes of today, Rule 803

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1 does not provide the defendants with greater access to Rule  
2 16. In other words, at some point, there may need to be  
3 litigation, and the Government has never taken a position  
4 that, at that point, they would not be entitled to the reports

5 [REDACTED] The Government has put on the record -- in the  
6 records, their concern about [REDACTED]

7 [REDACTED] And the Government has  
8 articulated those concerns. So from our perspective, you  
9 know, down the road, if there is a Rule 803 issue that the  
10 Court has to litigate at that point in time, there may be  
11 legitimate reasons for defendants to have the reports, and we  
12 can cross that bridge when we get there.

13 (Court reporter clarification.)

14 MS. NESTOR: If there is a Rule 803 issue, at some  
15 point in advance of trial, in the Government's view, that is  
16 for the District Court to address.

17 And Your Honor, I think you might have already  
18 addressed this, but obviously, any complaints about  
19 inconsistency [REDACTED]

20 [REDACTED] That is not a Rule 16 issue, and as the  
21 Court already alluded, that is not a *Brady* issue either  
22 because the Government has provided the necessary information  
23 under *Brady*. And I'm happy to address that next, unless the  
24 Court has questions.

25 THE COURT: So I just want to make sure I understand

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1 you. Your position is that contrary to what I think the  
2 defendant was arguing is that your obligation under Rule 16 is  
3 to provide the information, as opposed to the actual document,  
4 that by providing the information, that satisfies your  
5 obligation under Rule 16?

6 MS. NESTOR: That is the Government's position, Your  
7 Honor. And that they have the relevant information.

8 THE COURT: Right. I understand that your position  
9 is they have the relevant information. But I think the issue  
10 that counsel brought up in his argument was that that's not  
11 enough, that the document itself is the actual evidence, and  
12 that is what they're entitled to receive.

13 Okay. So why don't you address the *Brady* issue as  
14 well on the monitor reports.

15 MS. NESTOR: Yes, Your Honor. So the Government's  
16 obligations under *Brady*, I think, have been adequately met. I  
17 actually do not think it is the case law that under *Brady*, the  
18 [REDACTED] have to be disclosed. [REDACTED]

19 [REDACTED] It is the standard practice of the office  
20 and under Second Circuit case law to produce summaries for  
21 *Brady* purposes. It is not a theoretical issue, as counsel  
22 identified. It's a reality that there's case law that  
23 indicates that summaries are perfectly fine. [REDACTED]

24 [REDACTED]

25 [REDACTED] So I think *Brady*, in terms of the [REDACTED]

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1 has been more than satisfied and the essential facts are  
2 available to the defendant.

3 THE COURT: So Ms. Nestor, in your letter to me  
4 which I believe was ex parte -- I don't know for sure -- you  
5 listed several redactions, changes, that the Government made

6 [REDACTED]

7 [REDACTED]

8 Can you or are you willing to share with the defense  
9 what it is exactly that you did? [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 MS. NESTOR: Your Honor, the Government has no  
19 objection in doing that. I can't say for sure sitting here  
20 right now -- I thought we already did that, but we'll do that  
21 again. We have no objection to doing that.

22 THE COURT: Okay. I mean, I don't know if the  
23 defendants are aware of what they claim they've done, but I do  
24 think it's important that you understand that, so I'm going to  
25 ask Ms. Nestor just to put those on record.

1 MS. NESTOR: Sure. I can do it in broad categories,  
2 Your Honor.

3 THE COURT: That's fine.

4 MS. NESTOR: [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED] [REDACTED]

11 [REDACTED]

12 [REDACTED] [REDACTED]

13 [REDACTED]

14 [REDACTED] [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED] [REDACTED] [REDACTED]

18 [REDACTED] [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 THE COURT: [REDACTED] [REDACTED]

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1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED] [REDACTED]  
4 [REDACTED] [REDACTED]  
5 [REDACTED]  
6 [REDACTED] [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED] Correct?

10 MS. NESTOR: That's correct.

11 THE COURT: [REDACTED] [REDACTED]

12 [REDACTED] [REDACTED]  
13 [REDACTED]  
14 And I guess my question is why did you do that?

15 MS. NESTOR: Your Honor, we didn't -- sure.

16 Your Honor, so I think a few things. [REDACTED]

17 [REDACTED]  
18 [REDACTED] [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED] [REDACTED]  
22 [REDACTED]  
23 [REDACTED] [REDACTED]  
24 [REDACTED]  
25 [REDACTED]

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1 THE COURT: Okay. And now finally, the one query  
2 that does concern me is the [REDACTED] So I'd like to address  
3 that for a minute.

4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED] [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED] [REDACTED]  
13 [REDACTED] [REDACTED]  
14 [REDACTED] But aren't you under an  
15 obligation to the defendant to provide, at least, the  
16 information that they could then follow up on to determine  
17 whether or not there are [REDACTED]  
18 that could be considered exculpatory?

19 MS. NESTOR: So Your Honor, I think in the first  
20 instance, obviously, the defendants can subpoena [REDACTED]  
21 [REDACTED] But we take the Court's point, and to  
22 the extent, you know, Your Honor is asking, we are happy to  
23 re-review the [REDACTED] and consider which [REDACTED] we can  
24 provide to the defendants, especially ones that reference  
25 [REDACTED] To the extent the defendants want to try to go

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1 speak to those [REDACTED] we could consider that and obviously  
2 take the Court's cue on that.

3 THE COURT: Okay. I mean, just to be clear, the

4 [REDACTED] [REDACTED]  
5 [REDACTED]  
6 [REDACTED] [REDACTED]  
7 [REDACTED] [REDACTED]  
8 [REDACTED]

9 MS. NESTOR: Your Honor, I think that's also the  
10 problem. We didn't want to guess. You know, we just didn't  
11 know. [REDACTED] And ultimately, Your Honor, it  
12 would be somewhat guessing on our part. But we're happy to go  
13 through the [REDACTED] If the  
14 [REDACTED] are the concern, the Government can address that.

15 THE COURT: All right. Let me turn it back to  
16 Mr. Axel. And now that you've gotten, perhaps, a better  
17 understanding of [REDACTED]  
18 [REDACTED] perhaps you want to address some of these points.  
19 As I said, the one that concerned me the most was the  
20 [REDACTED] but I leave it to you to say whatever else you  
21 would like to add to that.

22 MR. AXEL: Thank you very much, Your Honor.  
23 Appreciate it.

24 Just as to Rule 16, I mean, the legal authority,  
25 plain language of Rule 16 requires the Government to permit

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1 the defendants to inspect and copy documents that are material  
2 in preparing their defense. I think without question, the  
3 Government doesn't contest these are material to preparing the  
4 defense.

5 (Court Reporter clarification.)

6 MR. AXEL: The plain language of Rule 16 requires  
7 the production of documents that are material to preparing the  
8 defense. The Government, I don't hear them disputing that  
9 these are material to preparing the defense, and so the  
10 documents must be provided. There's nothing in Rule 16 to  
11 authorize [REDACTED] The only case cited by the Government on  
12 this question in their brief, is the Stein case. And in that  
13 case, that was the KPMG Stein case, Judge Kaplan did order the  
14 production of relevant portions of KPMG's white paper that had  
15 been submitted to the Department of Justice. So I'm not aware  
16 of any authority that would authorizes, you know, [REDACTED]

17 [REDACTED]

18 And then, you know, similarly in *Brady*, the  
19 Government cited Leroy or Laroy, and that also had to do with  
20 information, not documentary evidence, such as this. And so I  
21 know it's the practice and recognized for some kind  
22 information, but again, not with underlying documentary  
23 evidence. [REDACTED]

24 [REDACTED] The  
25 [REDACTED] are evidentiary, as we'd indicated, and

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1 you know, so I just wanted to touch on that, as well, as a  
2 legal matter.

3 I don't know if the Court has any other questions on  
4 that legal issue.

5 THE COURT: No. That's fine. I'm good.

6 MR. AXEL: And then as to, you know, what may be  
7 differences, we do appreciate, obviously, you know, visibility  
8 into what the differences may be. We haven't had that kind of  
9 visibility. We do think that the [REDACTED] are critical and  
10 they may not have, you know, all the answers in terms of

11 [REDACTED]

12 [REDACTED] but they have information that is certainly  
13 material and necessary to help, you know, prepare our defense.  
14 And not only do we need to know what the content of the  
15 [REDACTED] which is the sort of collection of documents, but we  
16 need to know how they tie out, you know. And this gets in a  
17 little bit to the next category. [REDACTED]

18 [REDACTED] [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 You know, I would submit that the Court had  
23 indicated that there is also [REDACTED] I would submit, having  
24 not seen them, certainly [REDACTED] would be material and  
25 something we would want to see and believe we should be able

1 to see. Beyond those two categories, [REDACTED]  
2 [REDACTED] [REDACTED]  
3 [REDACTED] [REDACTED]  
4 [REDACTED]  
5 [REDACTED] [REDACTED] [REDACTED]  
6 [REDACTED] [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED] [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED] So you know, inculpatory information or information  
17 that the Government would characterize as derogatory or  
18 inculpatory of Huawei is exculpatory on the subject of whether  
19 [REDACTED] was defrauded. And that's just one example where it's  
20 very hard for, you know, the Government, I know, to put on the  
21 defense hat and assess things. And obviously, defense counsel  
22 is in the best position.  
23 [REDACTED]  
24 [REDACTED] Rule 16 requires it, number one, and  
25 number two, regardless, what could be the interest if there

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1 are really no differences. So with that Your Honor --

2 THE COURT: So let me direct that question to  
3 Ms. Nestor.

4 If, in fact, as we've been discussing, [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 Can you explain to me the concern?

9 MS. NESTOR: Yes. Sure, your Honor.

10 So Your Honor, obviously we cannot go into the ex  
11 parte submission that we provided to the Court. But we have  
12 laid out the concerns that the Government has with the  
13 provision of the reports to the defense and even defense  
14 counsel. I think we've laid that out very clearly in our  
15 submissions.

16 So the other thing I would just point out, the  
17 question really isn't whether viewing [REDACTED]

18 [REDACTED] The question is whether it affords  
19 anything beyond the [REDACTED] right. In our  
20 view, there's been a [REDACTED] I mean, it's very  
21 evident from Mr. Axel's recitation that the Government has  
22 satisfied *Brady*. The Government has produced [REDACTED]

23 [REDACTED] We believe we've satisfied Rule 16. [REDACTED]

24 [REDACTED]

25 [REDACTED]

1 [REDACTED] I think the point here  
2 is the Government has serious concerns. We feel like we've  
3 addressed Rule 16 and *Brady*. We're willing and able to,  
4 obviously, provide the [REDACTED] I -- you know, in my view,  
5 without having reviewed [REDACTED] again moments before we  
6 got on here, I just -- I don't think it's going to provide  
7 much more. But Your Honor, obviously, we're happy to provide  
8 the [REDACTED] We're happy to identify this for them. Of  
9 course, to the extent we provide the [REDACTED] they will be  
10 keyed to the entries themselves. Meaning, they'll know which  
11 entries they're keyed to.

12 THE COURT: Okay. All right. All right.

13 MR. GREEN: May I make a comment, Your Honor?

14 It's Mr. Green.

15 May I, with your indulgence?

16 THE COURT: You're here. Of course you can make a  
17 comment.

18 Go ahead.

19 MR. GREEN: Well, I don't think she answered your  
20 question. I mean, basically what she said to you was, you  
21 know, we filed an ex parte document in which, presumably,  
22 there are some reasons why they can't just give us the report.  
23 And you know, that's a tremendous handicap for us to be  
24 tilting at an ex parte document. You know, I can't imagine  
25 what the risk is in -- unless, you know, she thinks we're bad

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1 people, or you know, that we've somehow can't be trusted, what  
2 conceivably could be the reason that the Government would  
3 resist disclosure to counsel. And beyond that, I mean, I just  
4 have to believe that some of what they told you with respect  
5 to the risk or the concern that they have is just fanciful.  
6 And you know, we keep knocking at this strawman, because they  
7 use it a lot in this case. We can't tell them, this we can't  
8 tell them that. We can't do this, because this may happen.  
9 They may obstruct our case. I mean, it's all just, you know,  
10 in the ether there somewhere. I don't think they've come up  
11 with one-- I mean, I'm betting, because I haven't seen it.  
12 But I suspect they haven't come up with one concrete risk, you  
13 know, that they can identify based on, you know, a set of  
14 observable or identifiable circumstances that would cause the  
15 government, you know, to be concerned here.

16 And somehow, we've got to get through it. If not  
17 just for this motion here, I mean, you know, for this case in  
18 general in discovery. So I mean, I think your question to  
19 Ms. Nestor was right on point, and it's what Mr. Axel has  
20 said. I mean, you know, if they want to claim that what  
21 they've given to us is [REDACTED]

22 [REDACTED] you know, and then say, well, because we've  
23 done that, there's really no cause for them to be concerned  
24 that there might be [REDACTED]

25 [REDACTED] but that

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1 doesn't pass the laugh test. I think we're entitled to see  
2 the report.

3 And I'm going to be quiet here in one second. I'm  
4 just concerned that even the revelation of this material to  
5 the defense team is deemed by the Government to be so risky  
6 that it just simply can't be done. And I -- you know, I wish  
7 I could see their ex parte filing. Thank you, Your Honor.

8 THE COURT: All right. Well, let me go back for a  
9 moment and ask this question, is there any way that we could  
10 fashion a protective order that would allow the attorneys or a  
11 subgroup, a subset of attorneys to see, you know, [REDACTED]

12 [REDACTED] that would satisfy the  
13 Government and the Government's concerns as expressed in your  
14 submission so that we could protect it?

15 In other words, assuming for a moment that one  
16 concern is that the reports could be leaked, if the reports  
17 were provided to a limited subset of defense attorneys, we  
18 could, I think, fairly easily identify the supposed leakers.  
19 Not that I would anticipate that any of you who are present  
20 here today would do that. But I guess, Ms. Nestor, I would  
21 ask that the Government think about that. Maybe you haven't,  
22 maybe you have.

23 But you know, I hear what Mr. Green has to say, and  
24 he makes a good point that without seeing your letter, he  
25 doesn't understand what the problem is. By the same token,

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1 all of these attorneys are officers of the Court, and should  
2 they violate a protective order issued by the Court, they  
3 would not only face sanctions, but possibly disciplinary  
4 action and removal from the bar of the Eastern District and  
5 maybe even worse.

6 So I would ask you to think about that as a possible  
7 resolution and maybe you could confer with defendant's counsel  
8 on that proposal, okay.

9 MS. NESTOR: Yes, Your Honor. We understand. We  
10 will do so.

11 I'm not prepared to answer that question right now,  
12 but we will, of course, do so and we understand.

13 THE COURT: Okay. All right. Thank you.

14 Okay. So I guess, let me get back to Mr. Axel. We  
15 had two other categories in your motion.

16 Would you like to address them at this point?

17 MR. AXEL: Yes, Your Honor. And I guess before I  
18 do, if I may just give one nudge. I mean, I hope to be able  
19 to see the reports, you know, under the protective order that  
20 we negotiate, but in the event the Court is not inclined to  
21 otherwise rule that it be produced under Rule 16, the  
22 [REDACTED] if I may give one nudge on the [REDACTED] if we could  
23 get those as well.

24 THE COURT: Okay. Yes, I understood you wanted  
25 those. I'm not sure about those.

1           But let's proceed.

2           MR. AXEL: Very well, Your Honor. As to the second  
3 category that's, you know, the files, the monitor files, the  
4 monitor documents underlying the reports. Two basic issues  
5 here. One is to get confirmation from the Government that  
6 they've provided us all the monitor files and records in its  
7 possession. They indicate yes, but then they qualify it. So  
8 we would like confirmation on that. And then second, and this  
9 is related to the [REDACTED] point, but perhaps different in  
10 sort of all the more necessary, I think, in light of  
11 potentially the [REDACTED] So you know, it's  
12 important for us to be able to also know which of the many  
13 many materials relating to [REDACTED] the Government has produced,  
14 relate to the monitor, and provided by the monitor, relate to  
15 the monitor's reports. To the extent the Government --

16           THE COURT: Okay. I'm not -- maybe the Government  
17 understands what your argument is, but I'm not quite -- I'm  
18 not quite following what it is that you're saying or what it  
19 is you want the Government to do with respect to this issue.

20           MR. AXEL: The Government asserts that anything that  
21 it obtained from the monitor, monitor files, has been produced  
22 to us. But we don't know what has been produced to us  
23 originating from the monitor. It's, you know, the citations,  
24 the case law, you can't hide a *Brady* needle in a discovery  
25 haystack. And so to the extent there are monitor files that

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1 have been produced to us, we would like them identified as  
2 such. They relate to the report. They certainly relate to  
3 what the Government has suggested will be potential litigation  
4 over the report's admissibility, you know, whether it's

5 [REDACTED] can  
6 you know, provide us leads, along with the other information  
7 that we're going to be getting in order to be able to further  
8 our defense.

9 So two things. One, confirmation they've given us  
10 anything from the monitor, number one. Number two,  
11 identification of what amongst the discovery they obtained  
12 from the monitor.

13 THE COURT: Okay. Ms. Nestor, why don't you address  
14 the first one.

15 Have you provided the files that the [REDACTED]

16 [REDACTED]

17 MS. NESTOR: Your Honor, as our briefing indicated  
18 in this case, the monitor did not provide the Government with  
19 [REDACTED] I think we said that a number of  
20 times, but I just want to make that clear. What we do have is  
21 something the monitors did provide us. Those things have been  
22 turned over. Of course this is a sprawling case, Your Honor,  
23 with extensive discovery, and to extent the Government hedges  
24 in any way when they make representations to defense counsel  
25 it is for the fear that there might have been a document that

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1 has been missed. The Government has been extremely diligent  
2 in this case in providing documents. The discovery is still  
3 ongoing. There's no trial date set, Your Honor. So I think  
4 addressing the first point, the Government has made every  
5 attempt to provide to defense counsel, the discovery that's  
6 relevant in this case. It has provided the documents that the  
7 monitor has provided.

8 THE COURT: Okay. But when you -- so you said the  
9 monitor did not give you documents [REDACTED]

10 Is that what you heard you say?

11 MS. NESTOR: I think what I'm saying, Your Honor, is  
12 that the monitors did not say, [REDACTED] here's a  
13 document. The monitors did provide some documents to the  
14 Government. The Government is unable to tie those to the  
15 [REDACTED] We're not sure if that's the document the  
16 monitor [REDACTED] Defense counsel has the documents  
17 the monitor provided to the Government.

18 THE COURT: And have you identified them to the  
19 defendant as these are the collection of documents that we  
20 received from the monitor?

21 MS. NESTOR: We have not, Your Honor. We produced  
22 them in regular discovery as [REDACTED] documents or as public  
23 record documents, because many of them are public records.

24 And Your Honor, I'm not sure what citations Mr. Axel  
25 is citing to but, in terms of us having to identify that for

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1 the defendants, we don't believe that is *Brady*, in and of  
2 itself, and we don't believe that those documents really  
3 underlie [REDACTED] as far as the Government knows.  
4 But certainly when they get the [REDACTED] they will see what  
5 documents the [REDACTED] They will not be able to  
6 identify them, nor can the Government, [REDACTED]  
7 [REDACTED] So they can certainly -- you know, that gives them  
8 the ability under Rule 16 to go seek those documents in any  
9 way or shape that they want.

10 THE COURT: So I think Mr. Axel, perhaps, getting  
11 the [REDACTED] first will provide you with a better basis to  
12 try to figure out how to get through this mess.

13 I think that based on my review of what the  
14 government provided in-camera, Ms. Nestor is correct that if  
15 everything that was redacted was what [REDACTED]  
16 and the Government doesn't have it, I don't know that that's  
17 going to help you at all in your search here, apart from going  
18 back to the monitor and saying, you know, in [REDACTED] you  
19 [REDACTED] can we get it.

20 But I think what I'd like to do is put this issue  
21 aside for the moment and just wait until you get the  
22 [REDACTED] in terms of the  
23 [REDACTED] depending on how we work this out. Okay.

24 MR. AXEL: Yes, Your Honor. And I think it's --  
25 sorry I missed that, Your Honor.

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1 THE COURT: I said we'll hold this one in reserve.

2 MR. AXEL: Okay. Very well. And just to be  
3 clear -- I think it's clear, but just to make sure -- it  
4 sounds like the only missing piece is, you know, what, of the  
5 materials originated from the monitor, and you know, that  
6 could be helpful as we try to, you know, undue the Rubik's  
7 Cube here. But I understand the Court saying that we should  
8 wait and see what we get in the [REDACTED] and then hold this  
9 one in reserve.

10 THE COURT: Okay. And then the last issue is the  
11 Latham PowerPoints.

12 If you would like to address that one, Mr. Axel, or  
13 someone else can address that one.

14 MR. AXEL: Sorry to say it's me again and I will try  
15 to speak slowly enough here for the court reporter on this  
16 one.

17 You know, just quick background on this, you know,  
18 we had much less visibility into the Latham presentations. We  
19 had a little bit from public records. And then, until the  
20 opposition, I don't believe there was confirmation about that  
21 we'd even have copies of the presentations.

22 What do we know about these, we on the defense side?  
23 Based on the Government's opposition and the public record  
24 materials that we've seen, you know, [REDACTED] hired Latham &  
25 Watkins specifically to conduct a review relating to Skycom

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1 and its relationship to Huawei in response to the monitor's  
2 work.

3 Latham conducted, according to press reports, more  
4 than 100 interviews, reviewed more than 292,000 e-mails, and  
5 analyzed years of financial transactions and press reports.  
6 Latham made, at least, four presentations to the department  
7 between February and July of 2017. We understand those to  
8 have been oral presentations, aided, perhaps, by PowerPoint  
9 decks. Presumably, the Government has, to my understanding,  
10 as its practice, took extensive notes of these meetings. We  
11 understand that these were in the context of the DPA. And  
12 under that, the DOJ had the authority to obtain information  
13 from [REDACTED] and [REDACTED] was, at that time, seeking the eventual  
14 termination of its monitorship at the end of the term.

15 And we understand that based on access to [REDACTED]  
16 internal information, both documents and witnesses, Latham was  
17 able to ascertain facts regarding, you know, details about  
18 Huawei's relationship with Skycom and Canicula business in  
19 Iran, those facts and the knowledge within [REDACTED] where that  
20 knowledge lies and when, is material and exculpatory to Huawei  
21 for all the reasons explained in our brief.

22 I don't understand -- it doesn't appear in the  
23 papers that the Government disputes that the substance of  
24 these presentations is material and exculpatory under *Brady*.  
25 The Government contends that the information has already been

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1 disclosed by producing [REDACTED] records. But as we've indicated  
2 and what it appears -- again, you know, we don't have direct  
3 visibility, we have public reports -- it appears that the  
4 presentations were based on more than 100 interviews, as well  
5 as extensive documents, you know, some of which may or may not  
6 have been -- not all of which may have been produced to us.  
7 And there's good reason to believe that the documents that  
8 have been produced relating to [REDACTED] do not capture all of the  
9 information that Latham had reported to DOJ based on this  
10 extensive investigation that involved extensive interviews, as  
11 well as documents. The Government, again, cites to Leroy  
12 decision and also to a more recent case of Vasquez. I'll just  
13 point out that in Vasquez, the Court noted that the  
14 defendant's already had all of the documents, as well as  
15 testimony from an earlier trial explaining the documents. And  
16 the Court also noted that if the presentations contained  
17 information or conclusions based on the proponent's special  
18 knowledge, that such information may be material. And here,  
19 it appears to us, based on limited visibility we do have, that  
20 the Latham presentations to the Department, you know, were  
21 based on special knowledge including this access to 100  
22 witnesses that we don't have. And for that reason, we view  
23 those materials, which would take the form of the PowerPoints  
24 and they also take here the form of information, recorded in  
25 the Government's notes, that are for the same reasons as the

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1 monitor reports, you know, exculpatory, material, and subject  
2 to production under *Brady*.

3 THE COURT: So now, if I understand what you just  
4 said, you're not just seeking the PowerPoints, you're also  
5 seeking production of the attorney's notes. That's a  
6 different issue that wasn't briefed that seems to be your  
7 product question. But I don't recall seeing that in your  
8 papers.

9 MR. AXEL: Sorry, Your Honor. Well, information --  
10 you know, this would be an area, right, if it's information  
11 verbally communicated from Latham to the Government. I think  
12 that is a scenario in which a Government summary of  
13 information learned is standard practice and could satisfy  
14 *Brady*. I don't know what's in the PowerPoint. I don't know  
15 if the PowerPoints would be inclusive of whatever exculpatory  
16 information that's communicated. But it's really the  
17 presentations themselves and the exculpatory information in  
18 the presentations is what we're after.

19 THE COURT: At this point, do you actually know that  
20 there's exculpatory information in the PowerPoints?

21 MR. AXEL: Well, we do know, Your Honor, that this  
22 was in response to or connected to, you know, the monitor's  
23 questions about [REDACTED] and its potential violations of the  
24 deferred prosecution agreement based on its banking services  
25 provided in connection with, you know, Huawei and Skycom. And

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1 we do know that -- we believe that the role of Latham would  
2 have been to thoroughly investigate [REDACTED] knowledge, [REDACTED]  
3 intent and participation in any of these activities. And  
4 again, our point is that, with respect to these fraud charges  
5 that allege [REDACTED] was a victim that was deceived, any  
6 information produced that establishes [REDACTED] knowledge of  
7 Huawei's relationship with Skycom, its business in Iran, its  
8 business in Canicula, all of which were subject to what Latham  
9 was investigating, is exculpatory and material.

10 (Court Reporter clarification.)

11 MR. AXEL: So that's the reason we -- without much  
12 visibility, we -- you know, and having sort of just projected  
13 what that role may have been of Latham and what the work they  
14 would have done, we believe that it is highly likely, at  
15 least, that Latham uncovered significant evidence of [REDACTED]  
16 knowledge and awareness, the very facts that the Government  
17 now claims [REDACTED] was deceived about. And therefore, we believe  
18 that that information is subject to production under *Brady*.

19 THE COURT: Okay. Ms. Nestor.

20 MS. NESTOR: Yes, Your Honor.

21 I think just to start with, the issues that were  
22 briefed before the Court are the -- whether the PowerPoint  
23 presentations that were made by Latham to the Government are  
24 *Brady* and Rule 16. To start with, the Government has  
25 acknowledged that *Brady* and specific facts included in the

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1 presentations would be provided to defendants and has already  
2 said that they have the underlying documents, the defendants  
3 have the underlying documents, that were relied on by [REDACTED]  
4 The Government has cited to case law including Vasquez that  
5 indicates that defendants are not entitled to the  
6 presentations themselves, but the facts --

7 (Court Reporter clarification.)

8 MS. NESTOR: Your Honor, just to put a final point  
9 on it, in terms of *Brady*, the defendants have articulated  
10 their *Brady* concerns numerous times in this litigation based  
11 on documents they have obtained from the Government. And so,  
12 in the Government's view, the defendants are fully aware of  
13 the *Brady*, they've articulated it, they're on notice of it,  
14 and nothing more is required in that they have the underlying  
15 documents to support the presentations.

16 THE COURT: So when you say they have the underlying  
17 documents supporting the presentations, Mr. Axel just stated  
18 and obviously this is based on a press release or press  
19 report, that that they reviewed -- that Latham reviewed  
20 292,000 e-mails, are you telling me that those 292,000 e-mails  
21 have been provided to defendants?

22 MS. NESTOR: Your Honor, that's a very good  
23 question. We do not have every single document, obviously,  
24 that Latham reviewed. We have what has been provided to the  
25 Government by [REDACTED] That has been provided to defense

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1 counsel. What we have done is looked at the presentations to  
2 determine whether the underlying documents have been provided.

3 Your Honor, I cannot sit here and tell you that  
4 every single nitty little thing in the presentations has an  
5 underlying document that has been provided. I can tell you  
6 the relevant information has been provided. As the Government  
7 also articulated in its letter, the Government will re-review  
8 the presentations and ensure that any *Brady* or Rule 16  
9 information not already provided, is either provided in letter  
10 form or in some other form.

11 THE COURT: Okay. And when Mr. Axel asks for the  
12 notes or whoever from the Government attended the Latham  
13 presentation, have you reviewed those as well? because now I  
14 gather the defendants are saying those should be produced, if,  
15 in fact, they contain exculpatory information that has not  
16 already been provided to the defendants in some other format.

17 MS. NESTOR: Your Honor, with all due respect to the  
18 defendants, that issue is not before the Court. It was never  
19 briefed. And so, you know, I ask that we focus on what has  
20 been briefed before the Court.

21 THE COURT: Okay. Well, I didn't see it briefed.  
22 So I guess if they want to raise it, they can certainly do so,  
23 obviously.

24 But at this point, you're going to review the  
25 PowerPoint and see what's in there, make sure that everything

1 has been disclosed.

2 MS. NESTOR: That's correct, Your Honor. That is  
3 something the Government will do. We've already done it. I  
4 don't want the Court to think we haven't already done it. We  
5 have done that. But clearly, given the complexities and  
6 frankly, the allegations by the defendants here, we want to be  
7 very thorough, and we're going to do it again.

8 THE COURT: All right. Mr. Axel, anything you want  
9 to add at this point?

10 MR. AXEL: We're happy to continue the discussion on  
11 the, you know, the Latham presentations for information that  
12 was, you know, not maybe in the PowerPoint, but recorded  
13 somewhere. I do point out, you know, the motion asked for  
14 exculpatory information presented to the Government by Latham  
15 or some other representative about [REDACTED] and you know, I don't  
16 know how that information was order recorded. You know, I do  
17 think it's at issue and we would, you know, welcome the  
18 opportunity. We've been asking for the Latham presentations.  
19 I'm a little surprised that there hasn't already been, you  
20 know, a review of the Government's notes of what was presented  
21 for *Brady* materials, because it's clearly within the scope of  
22 the request we have made and it's been a long time now. But  
23 if there's, you know, more work to do on the Government's part  
24 to review that, we'll obvious continue to engage with them on  
25 it.

1                   THE COURT: All right. Well, my suggestion -- when  
2 I read the letter that you submitted, that the defense  
3 submitted, I thought the only thing being asked for was the  
4 specific PowerPoint, which in my mind, is a specific document  
5 or series of documents. I gathered that the Latham  
6 investigation did not produce a formal report such as the ones  
7 provided by the monitor. But that the presentation was, in  
8 fact, as Mr. Axel has suggested, an oral presentation in which  
9 the PowerPoint was used to assist in the oral presentation.

10                  Am I correct about that?

11                  MS. NESTOR: That's correct, Your Honor.

12                  THE COURT: Okay. All right. Well, I'm going to  
13 ask you to meet and confer on this issue of whether or not the  
14 Government's notes are subject to disclosure.

15                  Again, I don't know that the notes themselves would  
16 be subject to disclosure if, in fact, the Government provided  
17 you with information. This is not a Rule 16 document in my  
18 mind. If you disagree with me, obviously, you're free to  
19 submit something to let me know that I'm wrong. But I would  
20 suggest that maybe you talk to the Government after they've  
21 had a chance to, again, review the PowerPoint and their notes,  
22 and if this is still an issue, separate and apart from the  
23 request for the PowerPoint, you'll let me know, I'm sure.

24                  MR. AXEL: Very well, Your Honor. Thank you.

25                  THE COURT: All right. Is there anything else we

1 need to address today?

2 In terms of -- oh, Mr. Green, I think is rasing his  
3 hand.

4 Did I see you raise your hand?

5 MR. ATTY3: Sorry, I was on mute.

6 THE COURT: That's okay.

7 MR. ATTY3: Thank you. Could you ask the Government  
8 to clarify whether they know if the -- if Latham produced a  
9 written report which they gave to the monitor.

10 THE COURT: Do you know, Ms. Nestor?

11 MS. NESTOR: Your Honor, I'm confused as to what is  
12 being asked of the Government.

13 THE COURT: Mr. Green wants to know if, even if you  
14 didn't get a written report, do you know if they've provided,  
15 Latham provided a written report to the monitor in response to  
16 the issues that were raised in the monitor's report.

17 MS. NESTOR: I can't be sure one way or the other,  
18 Your Honor, because we wouldn't have necessarily been privy to  
19 that. I certainly don't know sitting here right now. I would  
20 hate to misrepresent something on the record, Your Honor.

21 THE COURT: That's fine. Your answer is sufficient  
22 to address Mr. Green's question, I think. Okay.

23 I mean, obviously, you're free to go to Latham and  
24 ask them if they've produced a report, right?

25 MR. ATTY3: Yes. I will do that. Thank you, Your

1 Honor.

2 THE COURT: All right. In terms of scheduling, I  
3 think, Ms. Nestor, there are a number of things that are in  
4 your court. Reviewing the [REDACTED] right, getting back to  
5 me on the issue of whether or not there's a way to provide a  
6 sufficient protective order that would satisfy the  
7 Government's concerns. You're going to meet and confer with  
8 defendant's counsel on this last issue of the Latham notes.  
9 I'll designate it as the attorney's notes. And maybe you can  
10 talk amongst yourselves, again, on what documents were  
11 provided by the monitor just to ensure that we've -- they've  
12 all been provided. I mean, obviously publicly available  
13 documents are, you know, publicly available and they can get  
14 them. So with that in mind, when can I get a report back from  
15 you all?

16 MS. NESTOR: Your Honor, given the amount of, kind  
17 of, to-dos here, I would ask for a month.

18 THE COURT: And in terms of a response, I assume  
19 Mr. Axel, Mr. Green, do you want a response to their letter?  
20 I don't know what they're going to say.

21 MR. AXEL: We, obviously, don't want to, you know,  
22 burden the Court with anything unnecessary, but depending on  
23 what they say, we may certainly want a response.

24 THE COURT: Okay. So I will let you notify me once  
25 they've provided you with their letter. Just say, you know,

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1 Judge, we would like to provide a response, can we have, you  
2 know, two weeks, whatever. Okay.

3 MR. AXEL: Very well, Your Honor.

4 THE COURT: All right.

5 MR. AXEL: So I just wanted to let Your Honor just  
6 know that we -- there's one other issue connected to this  
7 motion that's a little bit ancillary, but we have been  
8 meeting and conferring. It's somewhat related to the closure  
9 motion and that's concerns the redactions that have been made  
10 on the letter briefs themselves. We hope -- we're in the  
11 process of meeting and conferring on that. And just so the  
12 Court knows, if we do come back to the Court and seek guidance  
13 on redactions and what's appropriate or not, it's mindful not  
14 only for these particular motions, but also we're trying, from  
15 our perspective, to establish workable parameters that we can  
16 sort of use going forward, you know, for future -- for future  
17 filings in the case. We've been struggling with and having a  
18 lot of discussions with the Government about what needs to be  
19 redacted and what's not. So I hope --

20 THE COURT: These are the redactions you're  
21 referring to in the Government's July 21 letter?

22 Is that what you're talking about?

23 MR. AXEL: And ours, as well. We put imposed  
24 redactions at the request of the Government. We didn't  
25 necessarily agree with, but we agreed to, you know, redact and

1 then discuss, and then, you know, sort of work out what the  
2 appropriate limitations are on what should be redacted and  
3 what shouldn't be. And those discussions are ongoing with the  
4 Government.

5 THE COURT: Okay. All right. Well, that's fine.

6 You know, if you can't reach an agreement, you'll  
7 let me know. All right. Okay.

8 All right. So I'm going to reserve decision on the  
9 motion to compel until after I hear from you all with respect  
10 to the open issues, and hopefully you can resolve a lot of  
11 them so I don't have to do so much work. All right.

12 All right, everyone. Have a nice evening.

13

14 (Whereupon, the matter was concluded.)

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16 \* \* \* \*

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18 I certify that the foregoing is a correct transcript from the  
19 record of proceedings in the above-entitled matter.

20 s/ Avery N. Armstrong

September 10, 2021

21 Avery N. Armstrong

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